



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

August 16, 2005

Margaret Schwertner
Port of Anacortes
PO Box 297
Anacortes, WA 98221

REGISTERED MAIL
RR 359 893 690 US

Dear Ms. Schwertner:

RE: Order # 1982
U.S. Army Corps Reference No. 200400995
Water Quality Certification/Coastal Zone Consistency Determination for Port of
Anacortes, Cap Sante Boat Haven Redevelopment Project, Fidalgo Bay, Skagit County,
Washington

The request for certification for proposed work in Fidalgo Bay has been reviewed. On behalf of the State of Washington, we certify that the proposed work, as conditioned by the enclosed Order, will comply with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and other appropriate requirements of State law. This letter also serves as the State response to the Corps of Engineers.

Pursuant to 16 U.S.C. 1456 et. seq. (Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended), Ecology concurs with the applicant's determination that this work will be consistent with the approved Washington State Coastal Zone Management Program. This concurrence is based upon the applicant's compliance with all applicable enforceable policies of the Coastal Zone Management Program, including Section 401 of the Federal Water Pollution Control Act.

This certification is subject to the conditions contained in the enclosed Order. If you have any questions, please contact Rebekah Padgett at (425) 649-7129. Written comments can be sent to Rebekah at the Department of Ecology, 3190 160th Avenue SE, Bellevue, WA 98008, or at rp461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Geoff Tallent
Interim Section Manager
Shorelands and Environmental Assistance Program

Enclosure

GT:RRP:rc

cc: Randel Perry, U.S. Army Corps of Engineers
Loree' Randall, Ecology
Penny Keys, Ecology



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| IN THE MATTER OF GRANTING A |) | ORDER # 1982 |
| WATER QUALITY |) | Corps Reference No. 200400995 |
| CERTIFICATION TO |) | Cap Sante Boat Haven Redevelopment: repair |
| Port of Anacortes |) | existing structures; replace docks, piling, and |
| in accordance with 33 U.S.C. 1341 |) | floats; reconfigure moorage slips; and upgrade |
| FWPCA § 401, RCW 90.48.120, RCW |) | utilities and services, at Fidalgo Bay, Anacortes, |
| 90.48.260 and Chapter 173-201A WAC |) | Skagit County, Washington. |

TO: Port of Anacortes
ATTN: Margaret Schwertner
PO Box 297
Anacortes, WA 98221

On September 13, 2004, a public notice for a proposed water quality certification from the State of Washington was distributed for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA §401). The proposed project, redevelopment of the Cap Sante Boat Haven, consists of: existing dolphins will be replaced, an existing pump-out barge will be replaced with a new pump-out float, an existing travel lift will be replaced with a new boat launch facility, an existing fuel dock will be replaced and relocated, moorage slips on Docks C through F will be reconfigured, ramps for P and B Docks will be replaced, a 1-ton boat hoist will be added to the P Dock, old foundation material will be removed from the shoreline, and riprap shoreline armoring will be repaired.

Maintenance dredging, under Corps Reference # 200200422, will occur in phases to coincide with the removal and replacement of docks. The work will involve in-water construction within the Cap Sante basin. Existing docks and approximately 430 treated timber pile will be removed and approximately 330 new steel or concrete piles will be installed.

AUTHORITIES:

In exercising authority under 33 U.S.C. 1341, 16 U.S.C. 1456, RCW 90.48.120, and RCW 90.48.260, Ecology has investigated this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. Sections 1311, 1312, 1313, 1316, and 1317 (FWPCA Sections 301, 303, 306 and 307);
2. Conformance with the state water quality standards as provided for in Chapter 173-201A WAC authorized by 33 U.S.C. 1313 and by Chapter 90.48 RCW, and with other appropriate requirements of state law; and
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

CONDITIONS OF ORDER # 1982 AND WATER QUALITY CERTIFICATION:

In view of the foregoing and in accordance with 33 U.S.C. 1341, RCW 90.48.260, RCW 90.48.120, and Chapter 173-201A WAC, water quality certification is granted to the Port of Anacortes subject to the following conditions:

A. No Impairment of Water Quality:

- A1. Fidalgo Bay [WRIA #3] is classified as Class A waters of the state. Certification of this proposal does not authorize Port of Anacortes to exceed applicable state water quality standards (Chapter 173-201A WAC) or sediment quality standards (Chapter 173-204 WAC). Water quality criteria contained in WAC 173-201A-030(1) and WAC 173-201A-040 shall apply to this project, unless otherwise authorized by Ecology. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-110(3). Furthermore, nothing in this certification shall absolve Port of Anacortes from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.

Fidalgo Bay has been identified on the current 303(d) list as exceeding state water quality standards for PCBs. This proposed project shall not result in further exceedances of this standard.

B. Project Mitigation:

- B1. Impacts to aquatic resources shall be mitigated through measures described in the following documents, except as modified by this Order:
- Conservation measures as described in Biological Evaluation: Cap Sante Boat Haven West Basin Redevelopment, prepared by Grette Associates, L.L.C., July 26, 2004, specifically the conservation measures found on pages 16-17.
 - Conservation measures as described in Biological Evaluation Addendum: Cap Sante Boat Haven West Basin Redevelopment Project (200400995), prepared by Grette Associates, L.L.C., November 18, 2004, specifically the conservation measures found on pages 8-11.

C. Construction:

- C1. Construction Stormwater and Erosion Control: Work in or near waters of the state shall be done so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment and erosion control Best Management Practices suitable to prevent exceedances of state water quality standards (e.g., detention areas,

filter fences, etc.), shall be in place before starting construction, and shall also comply with all requirements of the NPDES Permit, if applicable.

C2. Best Management Practices described in the following documents shall be implemented:

- Cap Sante Boat Haven West Basin Redevelopment Biological Evaluation, dated July 26, 2004, pages 17-18.
- Cap Sante Boat Haven West Basin Redevelopment Project (200400995) Biological Evaluation Addendum, dated November 18, 2004, page 3.

C3. A floating containment boom shall be deployed and maintained which encloses the work site.

C4. Port of Anacortes shall take all necessary measures to minimize the alteration or disturbance of existing upland and riparian vegetation.

C5. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.

C6. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.

C7. Clean Fill Criteria: Port of Anacortes shall ensure that fill placed for the proposed project does not contain toxic materials in toxic amounts.

D. Emergency/Contingency Measures:

D1. In the event Port of Anacortes is unable to comply with any of the permit terms and conditions due to any cause, Port of Anacortes shall:

- Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem.
- Notify Ecology of the failure to comply. Spill events shall be reported immediately to Ecology's 24-Hour Spill Response Team at (425) 649-7000, and within 24 hours to Ecology's Rebekah Padgett at (425) 649-7129.
- Submit a detailed written report to Ecology within five days that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

Compliance with this condition does not relieve Port of Anacortes from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

- D2. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters.

E. Notification:

- E1. Applicant shall provide notice to Ecology's Rebekah Padgett at least 3 days prior to the start of construction, and within 14 days after completion of construction. Notification can take place by e-mail to rp461@ecy.wa.gov, telephone to (425) 649-7129, fax to (425) 649-7098, or in writing.

F. General Conditions:

- F1. For purposes of this Order, the term "Applicant" shall mean Port of Anacortes and its agents, assigns, and contractors.
- F2. This certification does not exempt and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
- F3. The Applicant will be out of compliance with this certification if the project is constructed and/or operated in a manner not consistent with the project description contained in the Public Notice for certification, or as otherwise approved by Ecology. Additional mitigation measures may be required through other local, state, or federal requirements.
- F4. The Applicant will be out of compliance with this certification and must reapply with an updated application if five years elapse between the date of the issuance of this certification and the beginning of construction and/or discharge for which the federal license or permit is being sought.
- F5. This Order shall be valid during construction activities and is valid until the Corps of Engineers 404 permit expires.
- F6. The Applicant will be out of compliance with this certification and must reapply with an updated application if the information contained in the Public Notice is voided by subsequent submittals to the federal agency. Any future action at this project location, emergency or otherwise, that is not defined in the Public Notice, or has not been approved by Ecology, is not authorized by this Order. All future actions shall be coordinated with Ecology for approval prior to implementation of such action.

- F7. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and foremen, and state and local government inspectors.

To avoid violations or non-compliance with this Order, the Applicant shall ensure that project managers, construction superintendents, and other responsible parties have read and understand relevant aspects of this Order, the NPDES permit if applicable, and any subsequent revision or Ecology-approved plans.

- F8. Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, or to ensure that conditions of this Order are being met.
- F9. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (e.g., violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect the public interest.
- F10. Liability: Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000) per violation for each day of continuing noncompliance.

Appeal Process:

Any person aggrieved by Order # 1982 may obtain review thereof by appeal. Pursuant to Chapter 43.21B RCW, a person can appeal this order to the Pollution Control Hearings Board within 30 days of the date of receipt of this Order. Any such appeal must be sent to the Washington Pollution Control Hearings Board, PO Box 40903, Olympia, WA 98504-0903. Concurrently, a copy of the appeal must be sent to the Department of Ecology, Shorelands and Environmental Assistance Program, Attn: Loree' Randall, PO Box 47600, Olympia, WA 98504-7600. These procedures are consistent with the provisions of Chapter 43.21B RCW and the rules and regulations adopted thereunder.

Dated August 16, 2005 at Bellevue, Washington.



Geoff Tallent, Interim Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington